

**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Rules Committee Minutes

**Clarion Hotel State Capital
320 Hillsborough Street
Raleigh, NC 27603**

Wednesday, April 21, 2010

Attending:

Committee Members: Jerry Ratley, Jennifer Brobst, Richard Brunstetter, John R. Corne, Debra Dihoff, James Finch, Matthew Harbin, Larry Pittman, Don Trobaugh

Excused Absences: Emily Moore, Pamela Poteat, David R. Turpin

Division Staff: Steven Hairston, Denise Baker, Marta T. Hester, Amanda J. Reeder, Andrea Borden, Michelle Edelen, Cheryl Riggins, Martha Lamb

Others: Betty Gardner, Emily Coward, Eli Albiston, Ellen Russell, Stephanie Alexander, Annaliese Dolph, Ann Ferrari, John Carbone, Sandra DuPuy, Diane Pomper, Louise Fisher, Martha Brock, Yelena Kushnir, Kent Earnhardt

Additional Handouts:

- 1) Comment Grid – NCI Rules 10A NCAC 27E .0300
- 2) Session Law 2009-264, SB 208 – An Act Pertaining to Statutory and Administrative Rule References to People with Disabilities
- 3) GS 122C-3(12a) and GS 122C-3(22) – Statutory Definitions for Developmental Disability and Mental Retardation

Call to Order:

Jerry Ratley, Chairman, called the meeting to order at 8:50 a.m. Mr. Ratley called for a moment of reflection. He then asked all present to introduce themselves. Mr. Ratley read the Ethics Reminder and asked if any member had a conflict of interest or appearance of conflict with respect to any matters that were coming before the Rules Committee at today's meeting. There were none.

Approval of Minutes:

Upon motion, second, and unanimous vote, the Rules Committee approved the minutes of the January 20, 2010 Rules Committee Meeting.

Proposed Adoption of 10A NCAC 27E .0301 - .0304 – NCI Quality Assurance Committee

Steven E. Hairston, Chief, Operations Support Section, DMH/DD/SAS, gave the presentation on the proposed adoption of Rules 10A NCAC 27E .0301 - .0304. The proposed rules set forth regulations for governing the NCI Quality Assurance Committee, including their purpose, duties and composition. The Commission has rulemaking authority for these rules pursuant to N.C.G.S. §143B-147(a)(1)(b). The rules were presented to the Rules Committee for final review to approve forwarding them to the full Commission. Mr. Hairston also reviewed the Comment Grid

Handout Sheet which showed all comments received on the Rules during the 60 day comment period and the Division's response to those comments.

The following are recommendations from the Rules Committee members for these Rules:

Rule 10A NCAC 27E .0304:

1. Dr. James Finch, Rules Committee member, recommended that individuals with research or academic experience be added to the composition of the NCI Committee. Dr. Finch further stated that this would ensure that there are individuals involved with the process that can observe from a disinterested perspective, as the people involved on the Committee are involved in the system.
2. Dr. Finch also asked that the Division use stronger language to support the use of licensed clinicians on the NCI Curriculum Review Committee. Dr. Finch suggested that the Division state it will assure the use of licensed clinicians, or people with expertise, or that policy indicate that these individuals will be involved. Mr. Hairston stated that he would take a look at the recommendation and review the policy in light of this feedback.
3. Jennifer Brobst, Rules Committee member, made a motion to add the following language to Rule 10A NCAC 27E .0304(b)(12) :*At least two NCI certified instructors on the committee shall be licensed clinicians.* Ms. Brobst stated that she was more concerned with ensuring expertise on the QA committee, rather than ensuring that the participants are disinterested parties. Ms. Brobst stated that she believed that a good committee can voice a strong opinion, regardless of whether or not the members work within the mh/dd/sas system.

Upon motion, second, and unanimous vote the Rules Committee approved the proposed adoption of 10A NCAC 27E .0301 - .0304 as amended be forwarded to the full Commission.

Proposed Amendment/Adoption of 10A Subchapter 26D - NC Department of Correction: Standards for Mental Health and Mental Retardation Rules

Betty Gardner, Senior Nurse Clinician and Quality Improvement Coordinator, NC Department of Correction, presented the proposed amendment/adoption of 10A NCAC Subchapter 26D – NC Department of Correction: Standards for Mental Health and Mental Retardation. The proposed amendments and adoptions are being presented to remove obsolete language, include more person centered language, and reflect current practices within the Department of Correction.

The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services has authority to promulgate rules for the delivery of mental health and mental retardation services to inmates in the custody of the Department of Correction ("DOC"). The statute requires that the Commission provide DOC the opportunity to review the proposed changes prior to promulgation. The proposed amendments/adoptions are presented to the Rules Committee for initial review and approval to forward to the Commission for publication.

John R. Corne, Commission Chairman, addressed a concern from one of the Commission members about the use of the term "mental retardation"; the member suggested that the substitute term "person with intellectual/developmental disabilities" be used instead. Mr. Corne informed the committee that there is a statute which refers to the condition as mental retardation. Mr. Corne further stated that until the statute changes that the Commission will have to address it as mental retardation.

Mr. Ratley informed the Rules Committee that Mr. Corne sent a copy of the proposed rules to the Secretary of the Department of Corrections and asked for his response.

Due to the length of the rules, Ms. Gardner previewed the summary of all proposed amendments and adoptions before the Rules Committee asked questions or made suggestions.

The following are recommendations from the Rules Committee members for these Rules:

Rule 10A NCAC 26D .0103:

1. Ms. Brobst stated that the term “mental health services” mentions Registered Nurses and mental health Social Workers, but does not clarify if they have to be licensed. Mrs. Gardner stated that the DOC employs Social Workers that are not licensed who work on aftercare planning and work with inmates with developmental disabilities. Ms. Gardner added that there is a difference between a mental health social worker, social worker and a licensed clinical social worker.
2. Ms. Brobst also noted that “mental health services” are defined, but “mental retardation services” are not, and stated that the term mental health services should be defined.
3. Dr. Finch stated that the definition for “clinician” does not include a nurse practitioner or physician’s assistant; however, they are defined in other areas.
4. Ms. Brobst stated that the definitions of “clinician” and “licensed clinician” appeared to conflict, and asked that they be reviewed to resolve the conflict.
5. Dr. Finch asked if the psychologists employed by the DOC had to be board certified. Dr. John Carbone, Chief of Mental Health Services, DOC and Commission member, stated that the psychologists may be board certified or board eligible. Dr. Finch asked that this be reflected within the definition.

Rule 10A NCAC 26D .0501:

1. Ms. Brobst stated that in the proposed rules, the Chief of Mental Health Services is responsible for many things; however, she didn’t see anything in the rules that provides any checks and balances, and those should be in place. Dr. Carbone stated that it had not been discussed that someone else share the responsibilities, and that her point was duly taken. Ms. Gardner stated that one such check and balance for the Committee to consider is that the DOC must complete an annual report regarding all activities mentioned in these rules, which is submitted to the DMH/DD/SAS upon request.
2. Larry Pittman, Rules Committee member, asked if there was a national accrediting body for programs within the DOC. Ms. Gardner stated that ten of the DOC’s facilities were accredited by American Correctional Association (ACA) within the past few years. Dr. Carbone informed Mr. Pittman that none of the other facilities could become accredited at this time, due to budget constraints; however, all facilities are striving to provide services under the accreditation standards.
3. Ms. Brobst moved that the language within the rule be amended to reflect that the quality improvement process involves privileging of professional staff and aftercare planning, as set forth elsewhere in the Subchapter.

Rule 10A NCAC 26D .0502:

1. Ms. Brobst recommended language be added to the rule to make it clear that the Quality Improvement Committee will lead the quality improvement process.
2. Sandra DuPuy, Commission Member, stated that the rule should be amended to clarify that the Quality Improvement Committee will develop the plan.

Rule 10A NCAC 26D .0503:

1. Ms. Brobst stated the use of the term “discipline” within (a) was vague and the language specifying the composition of the committee should be refined.
2. Ms. Brobst added that within section (b), the Chief of Mental Health Services may designate a subgroup, in order to ensure that the meeting occurs even if all members are not available. Ms. Brobst suggested the rule language be amended to state when a subgroup may be designated.

Rule 10A NCAC 26D .0504: Ms. Brobst stated that the term “Quality Improvement Initiative” was vague and needed to be defined.

Rule 10A NCAC 26D .0506:

1. Ms. Brobst questioned if there was anything in rule or policy relating to the number of staff that that one can supervise or when it must be face-to-face. Ms. Brobst further stated that the term “supervision” can mean several different things, including picking-up the phone or reviewing reports after a period of time. Ms. Gardner replied that supervision within DOC is performed in various ways, as like any other state agency. Ms. Gardner added there are two assistant Section Chiefs that help Dr. Carbone, and they travel to different facilities to supervise the clinicians. Ms. Brobst stated that the issue of supervision quotas and face-to-face interaction appeared to be too broad to address within the rules.
2. Dr. Richard Brunstetter, Rules Committee member, recommended that Section (b)(1) indicate that the licensed clinician who is going to supervise mental health staff members should be qualified in that service area.
3. Ms. DuPuy recommended amending the rule to state that mental health and mental retardation staff members will receive the same level of supervision.

Rule 10A NCAC 26D .0507:

1. Dr. Finch questioned Section (b) regarding delineation of privileges based on observation of skills. Dr. Finch suggested that it should be restated to say “when applicable or when appropriate observation is used before privileging”.
2. Ms. Brobst suggested striking the language “observation of skills exhibited in work” as it is already included in other language within the rule.

Rule 10A NCAC 26D .0508: Ms. DuPuy questioned Section (a)(3), specification of what information mental health staff must have access to, as there is no parallel language concerning mental retardation. Ms. DuPuy recommended that such language be inserted into the rule.

Rule 10A NCAC 26D .0510: Ms. Brobst stated that Section (b)(8) should also include “and needs” at the end of the sentence. Ms. Brobst stated that there was nothing in the Rule regarding future plans and identification of weaknesses, and this addition would address the deficiency.

Rule 10A NCAC 26D .0603:

1. Ms. Brobst questioned Section (a)(2) & (5) regarding whether the rule needed language regarding storage of pharmaceuticals.
2. Ms. DuPuy stated the Rule should address accessibility for individuals who are handicapped. Amanda J. Reeder, Rulemaking Coordinator for the Division, stated that there were federal regulations regarding accessibility. Ms. DuPuy and Ms. Brobst recommended that the language in the rule contain a reference to the Americans with Disability Act.

Rule 10A NCAC 26D .0704:

1. Mr. Trobaugh stated that "Health" should be added to the title of the rule to be consistent with other rules. Mr. Trobaugh then asked if the medical policies in .0704 are the only ones that exist and if they would have different policies based on the facility.
2. Mr. Trobaugh further questioned why these policies would not be in this rule. Mrs. Reeder stated that the Commission does not have authority to pass rules to tell other parts of the DOP or DOC system how they are going to manage their records. Mrs. Reeder stated that the workgroup's intent was to ensure that records are consistent with Commission rules regarding mental health and mental retardation records. Mr. Trobaugh and Matthew Harbin, Committee member, recommended that the proposed language in section (c) not be added and that in Section (e) the language "in accordance with other Department Rules" be struck through.

Due to time constraints, Jerry Ratley, Rules Chair, ended the Rules Committee review of 10A Subchapter 26D, North Carolina Department of Correction: Standards for Mental Health and Mental Retardation. The Committee agreed to meet again on Thursday, May 6, 2010 to complete the review and ensure that the full set of Rules can be presented to the Commission at its May meeting. Mr. Ratley informed the Committee that staff would work on scheduling the meeting and would inform the Committee of the meeting place and time.

Upon motion, second, and unanimous vote the Rules Committee approved the proposed adoption of 10A NCAC 26D .0103 - .0704 as amended to be forwarded to the full Commission.

Public Comment Period

Norman Carter, Commission member, addressed the Rules Committee regarding the lack of information geared toward Traumatic Brain Injury (TBI).

Ann Ferrari, Attorney, North Carolina Prisoner Legal Services, asked for the opportunity to send a letter regarding some of the proposed changes to NC Department of Correction: Standards for Mental Health and Mental Retardation. The group has comments regarding the seclusion and restraint rules that want those comments to be considered.

Martha Brock wanted to inform the staff that she has not been receiving the Commission mail out packets. Ms. Brock also stated her concern with forced medication for inmates at the Department of Correction, as she felt this was a client rights issue.

There being no further business, the meeting adjourned at 12:05 pm.